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[California Law](#)
[Publications](#)
[Other Resources](#)
[My Subscriptions](#)
[My Favorites](#)
Code:
Section:


[Up^](#)
[<< Previous](#)
[Next >>](#)
[cross-reference chaptered bills](#)
[PDF](#)
[Add To My Favorites](#)


PENAL CODE - PEN

PART 1. OF CRIMES AND PUNISHMENTS [25 - 680] (Part 1 enacted 1872.)

TITLE 7. OF CRIMES AGAINST PUBLIC JUSTICE [92 - 186.34] (Title 7 enacted 1872.)

CHAPTER 7. Other Offenses Against Public Justice [142 - 181] (Chapter 7 enacted 1872.)

148. (a) (1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(2) Except as provided by subdivision (d) of Section 653t, every person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a public safety radio frequency shall be punished by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(b) Every person who, during the commission of any offense described in subdivision (a), removes or takes any weapon, other than a firearm, from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment in a county jail not to exceed one year or pursuant to subdivision (h) of Section 1170.

(c) Every person who, during the commission of any offense described in subdivision (a), removes or takes a firearm from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment pursuant to subdivision (h) of Section 1170.

(d) Except as provided in subdivision (c) and notwithstanding subdivision (a) of Section 489, every person who removes or takes without intent to permanently deprive, or who attempts to remove or take a firearm from the person of, or immediate presence of, a public officer or peace officer, while the officer is engaged in the performance of his or her lawful duties, shall be punished by imprisonment in a county jail not to exceed one year or pursuant to subdivision (h) of Section 1170.

In order to prove a violation of this subdivision, the prosecution shall establish that the defendant had the specific intent to remove or take the firearm by demonstrating that any of the following direct, but ineffectual, acts occurred:

- (1) The officer's holster strap was unfastened by the defendant.
- (2) The firearm was partially removed from the officer's holster by the defendant.
- (3) The firearm safety was released by the defendant.
- (4) An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.
- (5) An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.
- (6) The defendant's fingerprint was found on the firearm or holster.
- (7) Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.
- (8) In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.

(e) A person shall not be convicted of a violation of subdivision (a) in addition to a conviction of a violation of subdivision (b), (c), or (d) when the resistance, delay, or obstruction, and the removal or taking of the weapon or firearm or attempt thereof, was committed against the same public officer, peace officer, or emergency medical technician. A person may be convicted of multiple violations of this section if more than one public officer, peace officer, or emergency medical technician are victims.

(f) This section shall not apply if the public officer, peace officer, or emergency medical technician is disarmed while engaged in a criminal act.

(g) The fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of subdivision (a), nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.

(Amended by Stats. 2015, Ch. 177, Sec. 2. (SB 411) Effective January 1, 2016.)